

Advisory Opinion

IECDB AO 2007-08

September 4, 2007

Cindy Litwiller
107 N. 32nd Street
Fort Dodge, Iowa 50501

Dear Council Member Litwiller:

This opinion is in response to your email letter of August 6, 2007, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(II) and Board rule 351-1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You request this opinion in your capacity as a member of the Fort Dodge city council. You have recently accepted a position as Marketing Coordinator for the Development Corporation of Fort Dodge and Webster County. This is a private sector entity that receives funding from the city and county along with private dollars from local businesses. You have subsequently abstained from voting on issuing funding from the city to the Development Corporation.

QUESTION:

Is a member of a city council who abstains from voting on funding for the member's private sector employer in compliance with the conflict of interest law?

OPINION:

Iowa Code section 68B.2A prohibits a government official or employee from engaging "in any outside employment or activity which is in conflict with the person's official duties and responsibilities." The statute then sets out three examples of when an impermissible conflict exists. Under the statute, voting to issue funding from the city to your private sector employer would constitute such a conflict.¹

To remedy this conflict, Iowa Code section 68B.2A(2)"b" provides that you "publicly

disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit for the outside employment." The statute then defines "official action" and "official duty" as "participating in any vote" or "taking any affirmative action to influence any vote."

Thus, your decision to abstain from voting on issuing funds from the city to the Development Corporation is the correct procedure to comply with Iowa Code section 68B.2A and to avoid engaging in conduct that would result in an impermissible conflict of interest.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Janet Carl, Vice Chair

Gerald Sullivan

Betsy Roe

John Walsh

Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ See Iowa Code section 68B.2A(1)"a" and more specifically "c."